## Weyerhaeuser Co. and United Paperworkers International Union, AFL-CIO, CLC, Petitioner. Case 11-RC-5910

December 16, 1994

## DECISION AND DIRECTION OF SECOND ELECTION

BY MEMBERS DEVANEY, BROWNING, AND COHEN

The National Labor Relations Board, by a three-member panel, has considered objections to an election held April 8 and 9, 1993, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 93 for and 116 against the Petitioner, with 14 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs and has adopted the hearing officer's findings and recommendations to the extent consistent with this decision, and finds that the election must be set aside and a new election be held.<sup>1</sup>

The hearing officer recommended that the Petitioner's eight enumerated objections be overruled. We find it unnecessary to pass on Objections 1 through 7 because we find merit in the Petitioner's exception to the hearing officer's recommendation that Objection 8 be overruled. In Objection 8, the Petitioner contends as follows: "The Employer, through its supervisors

and/or agents, attempted to influence the outcome of the election by withholding full names and addresses of employees on the voter eligibility list."

The voter eligibility list provided by the Employer pursuant to the requirements of *Excelsior Underwear*, 156 NLRB 1236 (1966), listed the last names, first and middle initials, and addresses of employees. The Union contended that the *Excelsior* list was deficient because it did not contain the employees' complete first names.

The hearing officer, citing *St. Francis Hospital*, 249 NLRB 180 (1980), found that the Employer's providing a list containing only surnames and initials was not conduct willfully designed to impede the Union's communication with employees. The hearing officer therefore recommended that the objection be overruled.

The Board recently held in *North Macon Health Care Facility*, 315 NLRB 359 (1994), that an employer must provide the full first and last names of employees on a voter eligibility list in order to "substantially comply" with the *Excelsior* list requirement.<sup>2</sup> The Employer did not provide the full names of employees. Accordingly, we will set aside the election in this case and direct a new election.

[Direction of Second Election omitted from publication.]

## MEMBER COHEN, dissenting.

For the reasons fully explained in my dissent in *North Macon Health Care Facility*, 315 NLRB 359 (1994), I would not set aside this election result based on employer conduct that was in compliance with then-extant law and practice.

Also, I would adopt the hearing officer's recommendation to overrule Objections 1 through 7 and, in the absence of exceptions, pro forma adopt the hearing officer's recommendation that objections labeled "These and Other Acts" be overruled. Accordingly, I would certify the results of the election.

<sup>&</sup>lt;sup>1</sup>The Union has excepted to certain credibility findings made by the hearing officer. It is the Board's established policy not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that the resolutions are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

In the absence of exceptions, we adopt, pro forma, the hearing officer's recommendation that the objections labeled "These and Other Acts" be overruled.

The Union has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

<sup>&</sup>lt;sup>2</sup>We overruled contrary holdings in *St. Francis Hospital*, supra, and similar cases.